

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE V. DONNIE JOHNSON

No. M1987-00072-SC-DPE-DD - Filed: October 6, 2006

ORDER

On June 20, 2006, the Court set an execution date of October 25, 2006, for Donnie E. Johnson. On October 3, 2006, on Johnson's behalf, the Post-Conviction Defender filed in this Court a "Motion to Appoint Clemency Counsel and Reset Execution Date." The Motion alleged that, because of a conflict of interest and the appearance of impropriety created by former Attorney General Paul Summers in joining the law firm currently representing Johnson, the firm will not represent Johnson at any clemency proceedings. The Motion requested that the Court appoint the Office of the Post-Conviction Defender to represent Johnson in the clemency process and that the Court reset the date of Johnson's execution to afford the Office of the Post-Conviction Defender time to provide adequate representation .

On October 5, 2006, the State of Tennessee filed a Response to the Motion. The State asserted that there is no constitutional or statutory right to court-appointed counsel in executive clemency proceedings. The State also argued that while Tennessee Code Annotated section 40-30-206, the Post-Conviction Defender's enabling statute, grants the Post-Conviction Defender the discretion to represent death-sentenced inmates during clemency proceedings, the statute does not provide for judicial appointment of counsel for the purpose of such proceedings. In addition, the State argues that since clemency proceedings are conducted entirely by the executive branch of government and are not part of the judicial process, the appointment of counsel by the Court would improperly interject the judicial branch of government into the operations of the executive branch and that Johnson and/or his counsel should request a reprieve from the Governor if additional time is needed to prepare for a clemency hearing.

On October 5, 2006, the Post-Conviction Defender filed a Reply to the State's Response asserting that the Court's Order appointing counsel in State v. Edward Jerome Harbison, No. M1986-00093-SC-OT-DD (Tenn., August 15, 2006), and Tennessee Code Annotated section 40-30-206 support the instant Motion for appointment of clemency counsel.

Upon due consideration of the applicable law and of the Motion, the Response, and the Reply to the Response, it appears to the Court that no statute, rule of court, or constitutional provision authorizes this Court to appoint the Office of the Post-Conviction Defender to represent Donnie Johnson at clemency proceedings. Furthermore, this Court's Order in Harbison specifically limited the appointment of counsel to "the instant case No. M1986-00093-SC-OT-DD" and did not extend

the appointment of counsel to clemency proceedings. Finally, should additional time be needed to pursue clemency, a reprieve may be sought from the Governor under Article III, section 6 of the Tennessee Constitution and Tennessee Code Annotated section 40-27-101. It is therefore ORDERED that the “Motion to Appoint Clemency Counsel and Reset Execution Date” is DENIED.

PER CURIAM